

**AMENDMENT CONTRACT # ASPEN - 02 TO THE  
CONTRACT FOR SPECIAL SERVICES BY ASPEN ENVIRONMENTAL GROUP  
FOR ENVIRONMENTAL STUDIES STANDBY ROSTER**

**EIR PREPARATION FOR THE CHEVRON AVILA POINT/AVILA TANK FARM GENERAL  
PLAN/SPECIFIC PLAN AMENDMENT, DEVELOPMENT PLAN, & COASTAL  
DEVELOPMENT PERMIT LRP2012-00003& DRC2012-00048**

THIS CONTRACT is made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California [hereafter "County"], through its Environmental Coordinator [hereafter "Coordinator"] and Aspen Environmental Group, a California Corporation [hereafter "Consultant"].

**WITNESSETH:**

WHEREAS, on April 11, 2011, Consultant and County entered into a retainer-type contract with the intention of executing subsequent contract amendments for individual projects as the need arises [hereinafter "Primary Contract"]; and

WHEREAS, the County has authorized the preparation of an Environmental Impact Report and Land Use Ordinance amendment for the proposed project identified as Avila Point Development Plan/Coastal Development Permit and Local Coastal Plan Amendment, ED13-144 (hereinafter referred to as the "Project"), which lies in the County of San Luis Obispo, and is more precisely located on the plat attached hereto as Exhibit "A." The Project includes the remediation of the Avila Tank Farm and rezoning for a resort facility through an amendment to the Avila Beach Specific Plan; and

WHEREAS, the County shall maintain high quality standards in the application of environmental laws in the County of San Luis Obispo; and

WHEREAS, the project requires an unbiased Environmental Impact Report [hereafter "EIR"], that is prepared in accordance with the California Environmental Quality Act, Public Resources Code, sections 21000 et seq. [hereafter "CEQA"], the State CEQA Guidelines, California Code of Regulations, title 14, section 15000 et seq. [hereafter "Guidelines"], and the County of San Luis Obispo Environmental Quality Act Guidelines [hereafter "Guidelines"], and that reflects the independent judgment of the County; and

WHEREAS, it is understood that the Consultant shall be the independent contractor of the County to prepare the EIR.

NOW, THEREFORE, in consideration of the covenants, conditions, agreements and stipulations set forth herein, the parties agree as follows:

## **I. PREPARING THE EIR**

### **A. DUTIES OF THE CONSULTANT.**

1. It is a fundamental requirement that this EIR be prepared by an unbiased Consultant.
2. To further protect the unbiased EIR requirement, the Consultant agrees that the duties described in this Contract shall be the only work Consultant performs on the Avila Point project, unless the Consultant obtains prior written consent from the Coordinator.
3. The Consultant shall make the field exploration, research, tests and analysis necessary to complete an EIR which fulfills the requirements of the EIR required by CEQA, the Guidelines, and the provisions set forth in Consultant's Scope of Work, [hereafter "scope of work" or Exhibit B]. Exhibit B is attached hereto and incorporated by reference herein except that the information as to cost and time is attached for informational purposes only.
4. Some factors could severely inhibit or prohibit a proposed project. An objective of conducting an environmental impact study is to identify these factors as soon as possible in order to make a determination regarding the feasibility of whether to continue with the EIR or the project. While preparing the EIR, the Consultant shall diligently watch for and analyze those environmental factors which could inhibit or prohibit the project. If such factors are identified, the Consultant shall immediately notify the Coordinator. The Coordinator will then advise the Consultant in writing on whether to stop work or continue with the EIR.
5. The Consultant shall submit the following documents in multiple copies in phases as described below: (1) Initial Study and Notice of Preparation, (2) a Draft Project Description and detailed EIR outline, (3) an Administrative Draft EIR, (4) a Draft EIR, (5) an Administrative Final EIR and (6) a Final EIR. Consultant agrees to prepare the documents in compliance with the provisions of CEQA, the Guidelines, and Exhibit B.

a. The Initial Study and Notice of Preparation. The Consultant will provide the Coordinator for review and approval (4) four hard copies of the Initial Study and Notice of Preparation and one electronic copy for distribution by the County.

b. The Draft Project Description and EIR Outline. At the initial kick-off meeting, the Coordinator will provide Consultant with a preliminary project description. Within two weeks following the initial kick-off meeting, Consultant shall submit four (4) copies of the draft EIR project description and EIR outline to the Coordinator for review and approval. The Coordinator must approve the draft EIR project description and EIR outline for this phase to be complete. After the Coordinator approves the draft project description and EIR outline, the Consultant may rely on it as a basis for the environmental impact analysis. It is understood that the project description may be further refined from time to time as the EIR study progresses. Any significant changes made to the approved project description may require additional analysis within completed sections of the EIR. The Consultant shall notify the Coordinator of such changes that will result in additional costs. Before incurring additional costs, Consultant shall submit an amended proposal to Coordinator. The Coordinator will advise Consultant whether to continue.

c. The Administrative Draft EIR. The administrative draft EIR is an internal agency document and shall be transmitted only to the Environmental Coordinator, who then may provide it to agencies as needed. Consultant shall not release any part of the administrative draft EIR to other agencies without advance direction from the Coordinator. Sixteen (16) weeks after the Coordinator approves the draft project description and EIR outline, Consultant shall submit four (4) unbound copies (3-hole drilled) in 3-ring binders and one electronic copy of an administrative draft EIR with appendices to the Coordinator for agency and staff review and comment. Fourteen (14) working days after the Coordinator submits comments to the Consultant, Consultant shall incorporate all of the Coordinator's comments and shall submit all changed or new pages showing the revisions to the Coordinator. The administrative draft EIR may be submitted and returned for changes as often as necessary until the Coordinator approves a copy as a complete administrative draft EIR. When the Coordinator notifies Consultant that the Coordinator has approved the administrative draft EIR, this phase is complete.

d. The Draft EIR. The Consultant has fourteen (14) working days from Coordinator's approval of the administrative draft EIR to provide the draft EIR, ready for public review. The Consultant shall provide the County with five (5) unbound copies with appendices (3-hole drilled), fifteen (15) bound copies of the draft EIR with CD of appendices), ten (10) separately bound copies of the appendices, twenty five (25) CDs (pdf format) and an electronic version in a County-acceptable format (e.g., Word, Excel, etc.) and forty five (45) accompanying Notices of Availability. Also, the draft EIR using an HTML, PDF, or other similar format, shall be divided into chapters so text and graphics can be easily used/placed on the County's web site for quick downloads. Also, unless otherwise specified by the County, a separate CD shall be provided that includes all reference documents cited in the EIR. The Coordinator must approve the draft EIR for this phase to be complete.

e. The Administrative Final EIR. After the comments described in CEQA and the Guidelines, sections 15086 and 15087, have been collected by the Coordinator, the Coordinator shall transmit these comments to the Consultant. The Consultant shall prepare written responses to these comments in accordance with CEQA and the Guidelines, section 15088. Within thirty (30) working days of receipt of these comments, the Consultant shall provide the County with two (2) unbound copies (3-hole drilled) and two (2) bound copies with one CD of the administrative final EIR with appendices for the Coordinator's review, comment and approval. The Coordinator will submit comments to the Consultant. Consultant shall incorporate all of the Coordinator's comments and shall submit all changed or new pages showing the revisions to the Coordinator. The administrative final EIR may be submitted and returned for changes as often as necessary until the Coordinator approves a copy as a complete administrative final EIR. When the Coordinator notifies Consultant that the Coordinator has approved the administrative final EIR, this phase is complete.

f. The Final EIR. After the Coordinator approves the administrative final EIR, the Consultant shall, within ten (10) working days, provide the Coordinator with, five (5) unbound copies with appendices (3-hole drilled, two-sided), twenty five (25) bound copies of the final EIR with appendices as attached CD format, and twenty five (25) CDs (pdf format), fifteen bound copies of the appendices. In addition, the Consultant shall submit the following: one set of CDs of the final EIR and appendices in original software version; textual information

shall be in Word format (as directed by County); spreadsheets and/or databases shall be in Excel format or other format acceptable to County. Also, unless otherwise specified by the County, a separate CD shall be provided that includes all additional reference documents cited in the Final EIR that are in addition to what was provided for the Draft EIR. Computer spreadsheets and graphics generated for use in the EIR shall be formatted to be easily used as part of the County's ArcView geographic information system as follows:

*Any geographic information electronically mapped as part of this project shall be provided as a .SHP file, a format compatible with ESRI's ArcView GIS software program, and shall be registered to the California State Plane NAD 83, Zone 5 coordinate system, units in feet. A .PRJ file shall be included reflecting this coordinate system.*

*All .SHP files submitted shall include sufficient metadata compatible with the ArcCatalog .XML format. This metadata shall include at minimum the following:*

- An abstract containing a brief narrative summary of the data set including levels of accuracy and methods of data capture.*
- Brief descriptions of each mapping unit and its defining characteristics for this county project*
- Purpose for creating the data with a summary of the intentions with which the data set was developed*
- Citation including the name of the organization and/or individual that developed the dataset*
- Maintenance requirements noting the frequency with which changes (if any are necessary) are made to the data set after the initial data set is completed*
- Theme key words associated with the data set*
- Contact information for the creator of the data set and for the creator of the metadata*
- Date the data was published*

*Descriptive text, thoroughly defining all features within each mapped data set, shall be incorporated into the data attribute tables. If codes or abbreviations were used for data attributes then a .LYR or other document explaining the codes shall be included. Map symbology shall be provided in a .LYR file which the County can import into any subsequent maps if desired.*

When the Coordinator notifies Consultant that Coordinator has approved the final EIR, this phase is complete.

## **B. DUTIES OF THE COUNTY.**

1. The Coordinator will be responsible for ensuring that the EIR reflects the independent judgment of the County as the Lead Agency as required by Section 15084(e) of the Guidelines.

2. The Coordinator will make any documents, relevant to the proposed project, in the possession of Coordinator, available to the Consultant.

3. It is understood that repeated revisions to the EIR are costly for the Consultant and the Coordinator. Therefore the Coordinator shall make every effort to reduce the number of iterations of the EIR to a minimum by diligently reviewing each submittal by the Consultant.

4. Coordinator will advise the Consultant whether to continue with the EIR or stop work when situations are identified, such as environmental, economic, technical, legal or other factors, which could inhibit or prohibit the project.

5. The Coordinator will accomplish the tasks required of the Coordinator described in Paragraph I.A. above.

6. Other agencies and the public may make comments to the draft EIR pursuant to CEQA and the Guidelines, sections 15086 and 15087. The Coordinator will make any of these comments which raise environmental points available to the Consultant.

7. The County will provide for payment to the Consultant as provided by the terms of this Contract. The Coordinator will expeditiously review all work submitted by the Consultant in order to assure prompt payment of invoices. At the request of the Consultant, the Coordinator will explain in writing any delay, not the result of the Consultant, that would prevent payment of the invoice within 30 days of receipt by the Coordinator.

### **C. PAYMENT.**

1. County's Maximum Cost of the EIR. The Contract for the preparation of the EIR is a lump sum Contract. It is not a time and materials Contract. The County will pay the Consultant a maximum amount of Three hundred thirty nine thousand nine hundred and fifty three dollars (\$339,953) for a Coordinator-approved, final EIR. The County will pay Consultant in staged payments throughout the performance of the Contract. The sums due under the timing of these staged payments are tied to products delivered by the Consultant to the Coordinator and approval of such products by the Coordinator.

2. Time of payment. At the request of the Coordinator, the Consultant shall submit itemized statements for work performed on each phase or from the execution of the Contract to the date of the request. The County has the right to access and copy the records to verify all work performed on the Contract to date. The County's right to inspect and copy records is in addition to the legal rights and liabilities of the parties pursuant to an audit described in paragraph III.M. of the Primary Contract.

a. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, sixty seven thousand nine hundred ninety dollars and sixty cents (\$67,990.60), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves two (2) copies of the draft project description and EIR outline. If the Contract is terminated before the Consultant expends twenty percent (20%) of the maximum

contract price in billable items, the County is entitled to a refund of the difference between the twenty percent (20%) down payment and an itemized billing amount for the work to termination date based on the rates and schedules in Exhibit B.

b. Consultant will be paid forty percent (40%) of the maximum amount in paragraph I.C.1. above, one hundred thirty five thousand nine hundred eighty one dollars and twenty cents (\$135,981.20), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the administrative draft EIR.

c. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, sixty seven thousand nine hundred ninety dollars and sixty cents (\$67,990.60), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the draft EIR.

d. Consultant will be paid twenty percent (20%) of the maximum amount in paragraph I.C.1. above, sixty seven thousand nine hundred ninety dollars and sixty cents (\$67,990.60), within thirty (30) days after the Coordinator receives a correct invoice, and receives and approves the contracted number of copies of the final EIR.

3. Early Termination Payment. If the Contract is terminated prior to the completion of the final EIR for a reason other than breach by the Consultant, the County will pay Consultant for work performed on the Contract from execution to termination, but not to exceed the maximum percentages listed above for each approved phase plus an additional amount for work performed and expenses incurred on the phase in progress. Payment for attendance at meetings and hearings, travel and per diem shall be allocated to the phase in which the travel occurred. If any phase is not completed and the Contract is terminated due to breach by the Consultant, the amount due Consultant shall be the maximum amount of the EIR less the amount required to hire and compensate a replacement Consultant to complete the EIR.

4. Cost Containment. In no event is the Consultant authorized to incur additional costs beyond the maximum amounts in this Contract without prior written agreement signed by the County. Before incurring additional costs or providing additional services, Consultant must inform Coordinator, in writing, of the estimated additional costs. Without prior written approval signed by the County, the County shall not be liable for any amount over the amounts specified herein.

5. Early Payment. For good cause, and in the sole discretion of the County, the County may make such early payments during any phase without terminating this Contract. The Consultant shall preserve the work performed to date and minimize the need to repeat work on the current phase. Before receiving an early payment, the Consultant shall submit an itemized statement showing time and materials spent from execution to date, specifically identifying the work done on the phase in progress and the estimated amounts remaining to complete the phase in progress. In no event shall Consultant be entitled early payment for a future phase. The Board of Supervisors delegates the authority to make early payments to the Environmental Coordinator provided the Environmental Coordinator retains sufficient funds to complete the phase in progress including costs to re-start a delayed phase. The County shall incur no liability for declining to make an early payment.

6. Delegation of County Signatory Authority for Minor Modifications. The Board of Supervisors delegates to the Environmental Coordinator the authority to sign amendments to this Contract that make reasonable modifications to the time of performance or that increase the scope of work and provide additional compensation, provided that all amendments do not total more than 10 percent of the total lump sum amount allowed by sections I.C.1, II.B.1, II.B.2, II.B.3, and III B., seventy three thousand one hundred seventy two dollars (\$73,172.00). Any amendment beyond that cumulative amount or an amendment pertaining to any performance other than modifying the scope of work, including but not limited to insurance, indemnity, property and other provisions in this Contract must be in writing and signed by the Board of Supervisors. These additional funds are intended to provide for flexibility needed to respond to changes generated in writing by the County; not by the Consultant. Any modification to the Contract within the scope of this paragraph need only be signed by the Consultant and the Coordinator; after approval as to form and legal effect by a Deputy County Counsel.

## **II. PROJECT MEETINGS AND PUBLIC HEARINGS**

This section of the Contract, Section II, "Project Meetings and Public Hearings," is an option to be exercised solely at the discretion of the Coordinator.

### **A. NUMBER OF MEETINGS AND HEARINGS.**

At the Coordinator's request, Consultant will send appropriate representatives to Two (2) Draft EIR workshops, four (4) internal meetings with Avila Tank Farm Collaborative Assessment Team (ATCAT) regulatory agencies, attendance at twelve (12) monthly ATCAT meetings (including four such ATCAT meetings in person), ten meetings for Senate Bill 18 Native American Consultation, one kick off meeting and site visit, two meetings with the applicant and two meetings with the County, and six (6) public hearings.

**B. PAYMENT CALCULATIONS.**

1. Attendance at project meetings. The Consultant shall be paid for the time spent by Consultant's representatives in preparing for and attending the project staff meetings. The Consultant shall submit an itemized billing for each meeting attended. For preparation and attendance at such meetings, Consultant's staff will be paid at the hourly rates as provided in Exhibit C. The total maximum for preparation, attendance and participation of all of Consultant's representatives in all meetings on the project and appeal, if any, is sixty two thousand six hundred and forty nine dollars (\$62,649) This is in addition to the amount stated in paragraph I.C.1. above.

2. Attendance at hearings. The Consultant shall be paid for the time spent by Consultant's representatives in preparing for and attending the six (6) public hearings described in paragraph II.A above. The Consultant shall submit an itemized billing for each public hearing attended. The Consultant shall be paid for preparation and attendance at such hearings, at the hourly rates as provided in Exhibit C. The total maximum for preparation, attendance and participation of all of Consultant's representatives in all public hearings on the project and appeal, if any, is fifty nine thousand four hundred and forty two (\$59,442). This is in addition to the amount stated in paragraphs I.C.1. above.

3. Staff Support Services and Project Scoping. The Consultant shall be paid for the time spent by Consultant's representatives for staff support outlined in the Phase 1 portion of the schedule and cost within the attached scope of work outlined in Exhibit B. These tasks include attendance at the ATCAT meetings once a month for one year, ten meetings for Senate Bill 18 Native American Consultation, scoping meeting, internal staff meetings and preparation of the Initial Study and Notice of Preparation. The Consultant shall be paid for preparation of such work at the hourly rates provided in Exhibit C. Total maximum for

completion of these tasks is two hundred sixty hour thousand seventy one dollars (\$264,071). This is in addition to the amount stated in paragraphs I.C.1. above.

4. Total Compensation for Project Meetings and Public Hearings and Adjustments to Payment. The total amount of compensation available for the optional task described in paragraphs II.A., II.B.1, II.B.2., and II.B.3. above is three hundred eighty-six thousand one hundred sixty-two dollars (\$386,162). In order to accommodate meeting and hearing adjustments, the Coordinator has the authority to adjust funding between and within the amounts authorized by paragraphs II.B.1 through II.B.3 above.

### **III. PROPOSED FINDINGS**

This section of the Contract, Section III, "Proposed Findings," is an option to be exercised solely at the discretion of the Coordinator.

#### **A. DUTIES FOR FINDINGS.**

At the Coordinator's request, Consultant shall prepare and deliver to Coordinator, two (2) unbound copies of proposed findings for use by the Board of Supervisors. The findings shall be prepared in accordance with the requirements of the Guidelines, sections 15091 and 15093. The Coordinator will notify Consultant of a reasonable due date for the proposed findings. The Coordinator must approve the proposed findings for this performance to be complete. Findings shall also be provided to the County electronically in the original format, such as in Word (County's latest version); any spreadsheets and/or databases developed for these findings shall also be provided electronically in the original format, such as in Excel or other County-approved format.

#### **B. PAYMENT FOR FINDINGS.**

County shall pay Consultant on a time and materials basis for preparing proposed Findings, up to a total maximum amount of five thousand six hundred eleven dollars (\$5,611) for Coordinator-approved proposed findings. Consultant will submit an itemized statement. The Consultant shall be paid for preparation of such findings, at the hourly rates as provided in Exhibit C. Payment will be due thirty (30) days after approval of proposed findings and receipt

of Consultant's correct invoice. Payment for findings is in addition to the amounts authorized by paragraphs I.C.1. and II.B.1., II.B.2 , II.B.3, and II.B.4. above.

## V. GENERAL CONDITIONS

All other provisions of the Primary Contract not specifically altered by this Amendment Contract remain in full force and effect and are incorporated herein by reference.

### CONSULTANT

Aspen Environmental Group  
A California Corporation

By: 

(Type in Name & Title below line here)

Hamid Rastegar, President

Date March 19, 2014

By: 

(Type in Name & Title below line here)

Jon Davidson, Vice President

Date March 19, 2014

### COUNTY OF SAN LUIS OBISPO

By: \_\_\_\_\_

Chairman of the Board of Supervisors

ATTEST:

\_\_\_\_\_  
Clerk of the Board of Supervisors

\_\_\_\_\_  
Date

**APPROVED AS TO FORM AND LEGAL EFFECT:**

**RITA L. NEAL**  
County Counsel

By:   
County Counsel

Dated: March 19, 2014

**Attachments**

Exhibit A – Location Map  
Exhibit B – Consultant Work Scope  
Exhibit C – Hourly Rates